

**UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

THE UNITED STATES OF AMERICA,)	
<i>ex rel.</i> JOSEPH M. THOMAS,)	
)	
Plaintiff,)	
v.)	Civil Action No. 1:17CV276
)	
DUKE UNIVERSITY et al.,)	
)	
Defendants.)	

HHS-NIH’S RESPONSE TO DUKE DEFENDANTS’ MOTION TO COMPEL

NOW COMES third-party U.S. Department of Health and Human Services, National Institutes of Health (“HHS-NIH”), by and through Matthew G. T. Martin, United States Attorney for the Middle District of North Carolina, and responds to the motion to compel filed by Defendants Duke University and Duke University Health System, Inc. (“Duke”), stating as follows:

1. Duke filed its motion to compel on June 27, 2018.
2. On July 6, 2018, the United States Attorney’s Office for the Middle District of North Carolina was authorized to represent HHS-NIH in this matter.
3. On July 9, 2018, AUSA Steven N. Baker, on behalf of HHS-NIH, met and conferred via telephone with counsel for Duke. Counsel discussed a path towards resolving Duke’s motion, pursuant to which HHS-NIH would produce approximately 7,300 emails it had gathered, and Duke would send a specific description of any remaining non-privileged documents it believed were in HHS-NIH’s possession that were responsive to

Duke's subpoena. HHS-NIH also agreed to provide name(s) pursuant to Duke's request for a 30(b)(6) deposition of HHS-NIH.

4. On July 17, 2018, counsel for HHS-NIH and Duke finalized and executed an agreement protecting any inadvertently produced privileged material in HHS-NIH's upcoming production.

5. On July 17, 2018, HHS-NIH provided the names of two witnesses who were available to serve as 30(b)(6) witnesses, Michelle Bulls and Dr. Sally Amero. HHS-NIH requested that Duke submit Touhy requests for these witnesses' depositions.

6. On July 17, 2018, Duke provided HHS-NIH with the requested written instructions regarding the remaining documents mentioned in paragraph 3, above and requested documents for an additional four custodians. HHS-NIH has requested its information technology employees to conduct the search for the additional custodians and estimates the searches will be completed by August 7, 2018.

7. On July 20, 2018, HHS-NIH produced approximately 7,300 emails via CD pursuant to Duke's subpoena.

8. On or about July 25, 2018, HHS-NIH should produce documents from the Center for Scientific Research via CD. These documents should contain HHS-NIH's policy and practice regarding the retention of grant documents.

9. HHS-NIH is searching for all other responsive documents and intends to produce all such documents as soon as possible.

10. HHS-NIH submits that it has taken reasonable steps to respond to Duke's subpoenas, and respectfully requests that Duke's Motion to Compel be denied.

This the 25th day of July, 2018.

Respectfully submitted,

MATTHEW G.T. MARTIN
United States Attorney

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CERTIFICATE OF SERVICE

I hereby certify that on July 25, 2018, the foregoing HHS-NIH's Response to Duke Defendants Motion to Compel was electronically filed with the Clerk of the Court using the CM/ECF CM/ECF system which will send notification of such filing to the following CM/ECF participants: James Cooney, III, Frederick Robinson, Carole Poindexter and Megan Engel.

Respectfully submitted,

MATTHEW G.T. MARTIN
United States Attorney

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